

AMENDING THE IMMIGRATION AND NATIONALITY ACT
TO PROVIDE FOR RELIEF TO SURVIVING SPOUSES AND
CHILDREN

OCTOBER 3, 2008.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 6034]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6034) to amend the Immigration and Nationality Act to provide for relief to surviving spouses and children, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. RELIEF FOR SURVIVING SPOUSES.

(a) **IN GENERAL.**—The second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended by inserting “(or, if married for less than 2 years at the time of the citizen’s death, an alien who proves by a preponderance of the evidence that the marriage was entered into in good faith and not solely for the purpose of obtaining an immigration benefit)” after “for at least 2 years at the time of the citizen’s death”.

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—The amendment made by subsection (a) shall apply to all applications and petitions relating to immediate relative status under section 201(b)(2)(A)(i) of the Immigration and Nationality Act pending on or after the date of the enactment of this Act.

(2) **TRANSITION CASES.**—

(A) **IN GENERAL.**—In the case of an alien described in subparagraph (B) who seeks immediate relative status pursuant to the amendment made by subsection (a), the alien shall have until the date that is 2 years after the date of the enactment of this Act to file a petition under section 204(a)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(ii)), notwithstanding any other provision of law.

- (B) ALIENS DESCRIBED.—An alien is described in this subparagraph if—
- (i) the alien's United States citizen spouse died before the date of the enactment of this Act;
 - (ii) the alien and the citizen spouse were married for less than 2 years at the time of the citizen spouse's death; and
 - (iii) the alien has not remarried.

PURPOSE AND SUMMARY

H.R. 6034 would end the widow penalty by allowing the petition for permanent residency of a widow or widower to continue despite the death of the U.S. citizen petitioner. It would also allow widows and widowers to self-petition if a petition was not filed before the death of the U.S. citizen spouse.

BACKGROUND AND NEED FOR THE LEGISLATION

Under current law, U.S. citizens can file for legal permanent residence for their foreign spouses. Once a petition is filed, it can often take several months, and sometimes years, for the Department of Homeland Security (DHS) to adjudicate the case. When a couple is married less than 2 years and the U.S. citizen petitioner dies before the petition is filed and adjudicated, the spouse is no longer eligible for permanent residence and must immediately return to his or her home country or be subject to deportation.

Widows and widowers often face difficult decisions when mourning the death of a spouse, including deciding whether to leave behind family they have come to love, and whether to separate their U.S. citizen children from their deceased spouses grandparents and other family members. This widow penalty also causes exceptional hardship for U.S. citizen families who welcome the addition of their son or daughter's spouse to the family. Unfortunately, upon the death of their child, the surviving spouse faces deportation. And, in many cases, the spouses deportation could result in loss of contact with grandchildren, one of the last few connections to a deceased son or daughter.

The Congressional Research Service reports that one of the two most common circumstances for granting private bill relief relates to "a conditional permanent resident petition for an alien spouse not being approved before the untimely death of a U.S. citizen spouse." Indeed, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law ordered favorably reported a private bill, H.R. 5243 (a bill addressing the widow penalty" for one individual widow, Kumi Iizuka-Barcena) on the same day that the Subcommittee ordered H.R. 6034 favorably reported. And the private bills are only a fraction of the spouses and families who experience this problem—currently, at least 100 spouses.

In another case brought to the attention of the Committee, a U.S. citizen from Virginia, the mother of a deceased soldier, has sought Congressional help to keep her daughter-in-law and grandchild from being deported due to the "widow penalty." She not only mourns the loss of her son, she also faces the potential loss of her daughter-in-law and the U.S. citizen grandchild left behind after her son's death. Her son fell in love and married a foreign spouse, but he passed away soon after the birth of their child, leaving the widow with no way to adjust her immigration status.

In yet another case, which has been the subject of private bills in the 108th and 109th Congresses, Maria Moncayo-Gigax, a citizen of Ecuador, married John Gigax, a U.S. Border Patrol Agent, on August 28, 1998. Sadly, on November 7, 1999, Mr. Gigax was killed in the line of duty. The former Immigration and Naturalization Service (INS) had not adjudicated the immigration petition before Mr. Gigax had passed away, thus exposing Ms. Moncayo-Gigax to deportation. She has since received a stay of deportation, but she could be deported at any time if the stay is lifted.

In another private bill introduced in the Senate in the 109th and 110th Congresses, a young woman named Jacqueline met Marlin Coats, the love of her life, in 2004 while studying at San Jose State University as a foreign student. She and Mr. Coats, a U.S. citizen, were later married in 2006. Soon after signing the petition to obtain permanent residency for his wife, he drowned while trying to rescue two young boys off San Francisco's Ocean Beach. Although Mr. Coats was a former lifeguard, he was caught in a rip tide current during the rescue attempt. Mrs. Coats now faces deportation.

H.R. 6034 would end the "widow penalty" by allowing the petition for permanent residency of a widow or widower to continue despite the death of the U.S. citizen petitioner. It would also allow widows and widowers to self-petition if a petition was not filed before the death of the U.S. citizen spouse.

HEARINGS

The Committee held no hearings on H.R. 6034.

COMMITTEE CONSIDERATION

On July 10, 2008, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law met in open session and ordered the bill, H.R. 6034, favorably reported, without amendment, by a voice vote, a quorum being present. On July 16, 2008, the Committee met in open session and ordered the bill, H.R. 6034, favorably reported with an amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 6034.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

A Congressional Budget Office (CBO) estimate of the costs of implementing H.R. 6034 as reported by the Committee on the Judiciary was not available as of the time of filing this report. Nor was any useful agency estimate of these costs available.

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee estimates the costs as follows:

Cost to the Federal Government

The Committee does not anticipate that the bill will have any significant effect on the federal budget in terms of the immigration cases themselves. The bill would simply make the widows of U.S. citizens eligible to continue the petition for legal permanent residency upon the death of the U.S. citizen spouse or allow them to self-petition. The Committee expects that the cases of those who do so apply can be handled with existing resources.

Data as to the number of beneficiaries under the bill and the number who would be eligible to, and who would elect to, apply for the immigration benefits provided under the bill is not available. However, the Committee believes there would be approximately 100 widows per year who would be eligible for such benefits. In addition, the Committee believes that the bill may increase certain costs to the federal government relating to programs in which legal immigrants and citizens may become eligible to participate. These costs would recur annually and indefinitely, and could be expected to vary from year to year, and to be offset, partially or fully, by increased tax revenue as the persons become legally entitled to work in the United States. It is not practicable, at this time, to estimate the net costs to the federal government.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states, pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that H.R. 6034 would end the “widow penalty” in immigration law by allowing the petition for permanent residency of a widow or widower to continue despite the death of the U.S. citizen petitioner. It would also allow widows and widowers to self-petition if a petition was not filed before the death of the U.S. citizen spouse.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 4 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 6034 does not contain any congressional

earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Relief for surviving spouses.

Subsection (a) of section 1 allows spouses of U.S. citizens who die before 2 years of marriage to remain an Immediate Relative for immigration purposes if the spouse can prove by a preponderance of the evidence that they were married in good faith.

Subsection (b) of section 1 provides that the amendment made by subsection (a) shall apply to all applications and petitions that are pending on or after the date of the enactment. It further provides that where the U.S. citizen spouse died before that date, and the immigrant spouse is otherwise eligible for Immediate Relative status under subsection (a), the immigrant spouse has 2 years from that date to file the petition for Immediate Relative status.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 201 OF THE IMMIGRATION AND NATIONALITY ACT

* * * * *

WORLDWIDE LEVEL OF IMMIGRATION

SEC. 201. (a) * * *

(b) **ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.**—Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a), are as follows:

(1) * * *

(2)(A)(i) **IMMEDIATE RELATIVES.**—For purposes of this subsection, the term “immediate relatives” means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen’s death (*or, if married for less than 2 years at the time of the citizen’s death, an alien who proves by a preponderance of the evidence that the marriage was entered into in good faith and not solely for the purpose of obtaining an immigration benefit*) and was not legally separated from the citizen at the time of the citizen’s death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen’s death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date and only until

the date the spouse remarries. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

* * * * *

